

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Jean Bookout; Charles Schwarz,)
individually and as Personal)
Representative of the Estate of)
Barbara Schwarz, deceased;)
Richard Forrester Brandt, as)
Personal Representative of the)
Estate of Barbara Schwarz,)
deceased,)

Plaintiffs,)

vs.)

Case No. CJ-2008-7969

Toyota Motor Corporation; Toyota)
Motor Sales, U.S.A., Inc.;)
Toyota Motor Engineering and)
Manufacturing North America,)
Inc.; Aisan Industry Co., Ltd.,)

Defendants.)

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TRANSCRIPT OF AFTERNOON TRIAL PROCEEDINGS
HAD ON THE 16TH DAY OF OCTOBER, 2013
BEFORE THE HONORABLE PATRICIA G. PARRISH,
DISTRICT JUDGE

Reported by: Karen Twyford, RPR

*** THIS TRANSCRIPT HAS NOT BEEN PROOFREAD ***

APPEARANCES

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1 (Whereupon, the following afternoon trial
2 proceedings were had on the 16th day of October, 2013, to
3 wit:)

4 THE COURT: We're back on the record. We're
5 outside the presence of the jury. And the first matter, it
6 is my understanding that we have exhibits from the
7 Pries-Morrison deposition.

8 MR. BAKER: Not yet, your Honor.

9 THE COURT: What about Hannemann?

10 MR. CLARK: The defendants have one exhibit with
11 Hannemann, which is Exhibit 67.1. It is the graph from the
12 testing that Mr. Bibb discussed with Mr. Hannemann.

13 MR. BAKER: No objection, your Honor.

14 THE COURT: The Court will admit Defendants'
15 Exhibit No. 67.1.

16 Now we're back on Mr. Santucci. Where did we
17 leave off?

18 MR. CLARK: The court had some concerns about page
19 137, and I can't recall whether the discussion that we had
20 took care of the court's concerns or not.

21 THE COURT: I think my issue there was which
22 recall was it, and I was told it was earlier recall. So if
23 that is accurate, then I'm allowing that to be in.

24 MR. CLARK: The court had some concerns about 234
25 and 250. I think that is what the court was going to go

1 back and look at.

2 THE COURT: Yes. Okay. So are we now on 238?

3 MR. BAKER: Yes, ma'am.

4 THE COURT: Before we do that, let me go back and
5 address the one issue that I said I needed to go back and
6 reread this morning. That was the stuff on 106 and 107, I
7 think it was. And this is the conversation about the
8 Saylor. Because of the timing issue, I was going to leave
9 in up to page 21, line (sic) 106, then delete any reference
10 about Saylor, the rest of that discussion about Saylor.
11 Just the portion that would go to the timing issue. On
12 106, delete from lines 22 all the way through 107, line 11.

13 MR. BAKER: Okay.

14 THE COURT: And then that brings us up to 238 that
15 I was going to reread. It is my understanding that all of
16 this discussion had to do with information that was
17 provided to NHTSA on the Tundra. And the purpose of this
18 is to show -- from plaintiffs' perspective -- is to show
19 that Mr. Hagwara (phonetic) possibly lied to congress,
20 correct?

21 MR. BAKER: Yes, ma'am. As well as shows -- goes
22 to our issue that we talked about with the culture at
23 Toyota. And also our deceit claims, and it also
24 establishes at 238 Mr. Santucci's position as the window or
25 connection between Toyota and NHTSA.

1 THE COURT: Okay. I'm going to allow that in.
2 But I had a question on page 242. It seems like we just
3 picked up with an answer is that incomplete?

4 MR. BAKER: Yes, ma'am. That was one of my
5 additions.

6 THE COURT: Seven through 15?

7 MR. BAKER: Yes, ma'am.

8 MR. CLARK: I think we already cleaned that up
9 subject to our objections.

10 THE COURT: What is the next thing after 238?

11 MR. CLARK: The court had a question -- I don't
12 recall if they wanted it taken out or not was taken out of
13 259 -- but I think the discussion that we had off the
14 record took care of that, perhaps.

15 THE COURT: I don't remember if we had a
16 discussion. My concern was isn't this a subsequent
17 remedial measure.

18 MR. BAKER: And the reason -- we didn't discuss it
19 today, but I don't think it is a subsequent remedial
20 measure because it goes in the same vein we discussed with
21 a prior deposition. While there is a discussion here about
22 it, they never say they actually do it. So it wouldn't be
23 a subsequent remedial measure unless they actually
24 discussed the fact they did it.

25 MR. CLARK: Of course, they did do it ultimately.

1 MR. BAKER: But that is not what they said here.
2 They had discussions, Are we going to do it.

3 MR. TEAGUE: Any considerations of subsequent
4 remedial measures, whether done or not done, are not
5 admissible.

6 THE COURT: If you decide -- if you consider
7 something and don't do it. Is that not under the same vein
8 as why you don't allow subsequent -- when they do something
9 and do decide to do it?

10 MR. PORTIS: So are you saying they had
11 discussions and they decided not to do anything about it?
12 Wouldn't that be a subsequent remedial measure? We say no,
13 definitely not.

14 MR. BAKER: It has to be a measure that is
15 discussed in here. We already let in testimony before
16 about the brake override and discussions about it.

17 MR. TEAGUE: That would fly in the face of the
18 very purpose of that. It would have a chilling effect on
19 the people evaluating and making efforts to take subsequent
20 remedial measures, which is the purpose behind the rule.

21 MR. TAWWATER: But they didn't.

22 MR. BAKER: They did on some.

23 MR. CLARK: Well, they did on all of them in 2010.

24 MR. BAKER: But not on our vehicle.

25 MR. CLARK: On the Camry in 2010 they certainly

1 did.

2 THE COURT: My concern is that by limiting this --
3 I'm going to delete this. My concern is by saying from
4 such date to such date you did nothing. It is easy to
5 infer from that -- so I'm delete that.

6 MR. BAKER: That is 259 line 2 through 12?

7 THE COURT: Yes. And I think the discussion
8 further on goes to -- is the same thing about.

9 MR. BAKER: So through actually 260 line 10.

10 THE COURT: Everything on 259 and 260 should be
11 deleted.

12 MR. CLARK: Our next concern, and I think the next
13 thing on anybody's list that is unresolved is beginning on
14 page 334 and going for a long time. We have Mr. Santucci
15 being asked to read in all these hearsay reports of other
16 incidents. We have objections on similarity grounds. And
17 I understand the court has already overruled, but this is
18 also a hearsay problem with Toyota not being allowed to
19 cross-examine these people who have complained to NHTSA
20 about the truth or not about what they told NHTSA.

21 THE COURT: Are these VOQ something? These go to
22 NHTSA, right?

23 MR. CLARK: Correct.

24 THE COURT: These are not on the Toyota customer
25 complaint?

1 MR. CLARK: Correct. It is a vehicle owner
2 questionnaire. And sometimes during the course of a NHTSA
3 investigation, NHTSA shares the vehicle owner
4 questionnaires with the manufacturers. I think that's what
5 happened here.

6 THE COURT: These all came from Toyota, so they
7 were Toyota documents?

8 MR. BAKER: They went to Toyota.

9 MR. CLARK: They went to NHTSA, and then NHTSA
10 sent them to Toyota.

11 MR. JENNINGS: Through this guy.

12 THE COURT: Plaintiffs got them from Toyota, not
13 from NHTSA, correct? They just all have Toyota numbers, so
14 I am assuming that Toyota produced them from their files.

15 MR. CLARK: I'm not sure of that, your Honor.
16 There was a Freedom of Information Act request, I think we
17 talked about that this morning, that was made to NHTSA that
18 resulted in the production of the whole bunch of documents
19 that were used in this deposition. I'm not sure as I stand
20 here --

21 MR. BAKER: Here we are, your Honor. It goes back
22 the page 332, says 673.

23 MR. CLARK: It is a Toyota document. You're right
24 Mr. Baker.

25 THE COURT: That included all of them. Okay.

1 MR. CLARK: But as the court has already ruled
2 correctly, just because something may be a Toyota business
3 record that doesn't take care of the underlying hearsay
4 within it. Certainly all these statements from people at
5 NHTSA, and for that matter the statements from NHTSA to
6 Toyota, are hearsay and not without any exception.

7 THE COURT: The issue is if it's a public record
8 whether NHTSA could get up and testify to it, and NHTSA can
9 certainly get up testify as to what its statements were,
10 perhaps not the statements others gave them.

11 MR. CLARK: I think that's probably right as a
12 general rule, your Honor. NHTSA could -- if NHTSA had made
13 some comment about any of these -- in fact, if Mr. Santucci
14 had been asked about NHTSA's comments about any of these,
15 we might be having a different conversation, but that's not
16 what we have here. And, in fact, I don't really have Mr.
17 Santucci being asked about them. It is just plaintiffs'
18 lawyer trying to get them into the record by Mr. Santucci
19 reading them.

20 MR. BAKER: I think it is attached to a Toyota
21 document that is the exhibit.

22 THE COURT: Even if it's a -- if I'm treating it
23 as a public record or a business record, you can't still
24 have hearsay within hearsay. Doesn't everything within the
25 document -- I have to view it from the standpoint as if

1 someone from the business is talking about it, or someone
2 from NHTSA is talking about it, what would I allow them to
3 say or not. Because isn't this hearsay within hearsay?

4 And the first hearsay is overcome by public record
5 or business record, but then these are all statements by
6 third parties that I certainly wouldn't allow anyone from
7 NHTSA to get on the stand and talk about.

8 MR. TAWWATER: These, all of these e-mails, all of
9 these VOQs they have received, and they have received them
10 according to the e-mail, go to the notice that Toyota had
11 of these complaints and what Toyota does or doesn't do once
12 it is placed on notice of these is relevant to the case.

13 THE COURT: Let me ask: Because a lot of these --
14 and I didn't go back and look at each one of them -- a lot
15 of them would go to notice if the complaint was pre --
16 number one, you would have to show -- I don't know when
17 Toyota got them. But a lot of these incidents were after
18 Ms. Bookout's.

19 MR. CLARK: We can go through them real quick on
20 the record. First one is 334, 335, 336, received by NHTSA
21 on July 1, 2008, incident was June 28, 2008. Second one,
22 337 -- 337, 338 some of 339, May 25, 2008, after her crash.

23 THE COURT: When was the crash again?

24 MR. CLARK: September 2007.

25 MR. BAKER: I will interject just a little bit,

1 your Honor. If you go through each one of these, he is
2 questioned about some of them.

3 THE COURT: Okay. We would need -- let's not put
4 all of this on the record right now. Let's figure out so
5 we are not cluttering the record. Off the record.

6 (Whereupon, an off-the-record discussion was had.)

7 THE COURT: The court is the going to delete
8 beginning on page 334 at line 13, all of 334, 335.

9 MR. BAKER: 336 to line 10.

10 THE COURT: 336 to line 10.

11 MR. BAKER: Yes, ma'am.

12 THE COURT: Then I'm going to pick up again on 337
13 at line 20. I'm going to delete that, 338, 39, 40, 41
14 through 44, 45 through 348, line 21. Then we will pick up
15 again at 349 and start deleting at line 13. All of 349.

16 MR. BAKER: Hold up, your Honor. I think at 348
17 it goes down to line 13. Then the question picks up at
18 line 22 and carries over.

19 THE COURT: We're deleting everything up to line
20 22 of 348. So I'm deleting everything on 348, or it wasn't
21 designated. But it will pick up at line 22, then it goes
22 over to page 349 through line 12. I'm deleting beginning
23 349, line 13. I am deleting all of 350 through 52. Then
24 it was either previously deleted, or I'm deleting it now,
25 nothing on pages 353 through 356 will be played. Nothing

1 on pages on --

2 MR. BAKER: Wait.

3 MR. CLARK: Very top of 356.

4 MR. BAKER: On 356 we start at line 21.

5 THE COURT: So the court will delete everything on
6 page 356 through line 20. We are play beginning at line 21
7 through 357, line 4.

8 MR. BAKER: Yes, ma'am.

9 THE COURT: We will start deleting at 357, line 5.
10 Delete all the way through 358, line 19. We will play
11 beginning at line 20 all the way to --

12 MR. BAKER: 359.

13 THE COURT: Line 19?

14 MR. BAKER: Yes, ma'am.

15 THE COURT: With the redaction of the word
16 "recall" on line 16. And we will delete everything on page
17 360, 61, 62, 63 up through line 19. We will start playing
18 at line 20, and we will play the remainder of those
19 designations.

20 MR. CLARK: We can probably stay on the record,
21 because I think we may have already taken care of
22 everything in Volume 2. Yes.

23 THE COURT: Okay.

24 MR. CLARK: Specific concerns that we had in
25 Volume 2 subject, of course, to our previous objections and

1 the court's ruling on those.

2 THE COURT: Okay. Give me just one second. Off
3 the record.

4 (Whereupon, an off-the-record discussion was had.)

5 THE COURT: We're now talking about the video
6 testimony of Colleen Lambert. The court is going to delete
7 on page 20 lines 2 through 15.

8 MR. CLARK: Just for the record, your Honor, on
9 that, I think page 20, line 1 should be played. It is just
10 the very end question that was designated, just for
11 housekeeping.

12 THE COURT: You're right. Should begin on line 2.
13 The next question that I had was on page 28. Who
14 designated orange?

15 MR. CLARK: We did.

16 THE COURT: Because I thought that I consistently
17 been ruling that you can't talk about the injuries and
18 stuff.

19 MR. CLARK: I think you did. And I --

20 THE COURT: I thought that was based on your
21 request.

22 MR. CLARK: It was, because we started with people
23 who were injured. So it was our thought if we were going
24 to talk about people who were injured, we should also talk
25 about people who were not injured.

1 THE COURT: I am going to delete page 28, lines 1
2 through 10. And then on page 27, I was going to delete the
3 reference for the same reason, lines 12 through 14, talk
4 about I bet that was frightening, extremely frightening on
5 page 27.

6 MR. BAKER: Okay.

7 THE COURT: My next issue was on page 34. I
8 thought that because I hadn't -- I granted the plaintiffs'
9 motion in limine that you can't ask the parties what kind
10 of car they're currently driving, I didn't think you should
11 then be able to ask someone who is not driving one. I'm
12 deleting page 34, lines 15 through 21.

13 Then my next set begins with page 39, this whole
14 discussion about the windshield. I intended to delete -- I
15 wanted to lay the foundation about because the replaced
16 windshield. I want to delete the portions where she is
17 basically suggesting that her dealer lied to her. So I was
18 going to delete page 39, lines 23 through 25, then on page
19 40, lines 1 through --

20 MR. CLARK: 15, maybe.

21 THE COURT: Well, off the record.

22 (Whereupon, an off-the-record discussion was had.)

23 THE COURT: I'm going to delete on page 40 lines 1
24 through 7, and then pick up with the question on line 8 and
25 go all the way through line 14 deleting the remainder of

1 page 40. And all the way through line 15 on page 41.

2 MR. CLARK: I was on the wrong page.

3 THE COURT: On page 39, I'm going to delete the
4 question beginning at line 23, all the way through the
5 answer on page 40, which ends on line 7. Then I'm going to
6 pick up again on page 40, line 15, delete all of page 40
7 and all of 41 through the line 15. And that's all
8 discussions about whether her windshield was replaced and
9 whether she was told about it.

10 Those were the only comments that I had on this
11 deposition. Mr. Baker?

12 MR. BAKER: I have none.

13 MR. CLARK: I think, your Honor, have we talked
14 about -- I just -- I can't recall if we've talked about it,
15 these comments and they show up in a lot of these, like on
16 page 31, why did you do this, why did you do that after the
17 incident. Why did you send this letter to Toyota. I don't
18 see how any of that is relevant.

19 MR. BAKER: Doesn't that go to customer
20 expectation?

21 MR. CLARK: Which is not an element of anything
22 Oklahoma, I don't think.

23 MR. BAKER: I think it is.

24 THE COURT: But she is saying -- isn't the
25 relevance on 31 that she is saying Toyota said there wasn't

1 anything wrong with her so she wanted to follow up?

2 MR. CLARK: It's a concern that we have. If
3 that's the court's view, then's fine. But it's a sort of
4 ongoing concern in a lot of these.

5 THE COURT: Okay.

6 MR. CLARK: And I think the only -- I had a note
7 about page 42, and I'm not sure. I think that the same
8 sort of question. So we don't probably need to talk about
9 that. The court is inclined to overrule our objection.

10 THE COURT: Yes. Anything else on this one?

11 MR. CLARK: No.

12 THE COURT: What is the other one that you thought
13 might be relatively short?

14 MR. CLARK: Heinrich we have a little more.

15 Although we may be through the afternoon now.

16 THE COURT: What about Van Alfen.

17 MR. BAKER: We're done on Van Alfen.

18 MR. CLARK: We are now done with Lambert, we are
19 now done with Santucci.

20 THE COURT: Have we played Van Alfen?

21 MR. CLARK: No. We're done talking about Van
22 Alfen.

23 (Whereupon, the lunch recess was had.)

24 THE COURT: We're back on the record. The members
25 of the jury are present as well as counsel and their

1 clients. And, plaintiff, you may call your next witness.

2 MR. TAWWATER: We call Sherry Brandt.

3 THE COURT: Raise your right hand, please.

4 (Witness sworn.)

5 SHARON LYNN BRANDT,

6 called as a witness, after having been first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TAWWATER:

10 Q Tell the jury your name, please.

11 A Sharon Lynn Brandt.

12 Q Where do you live, Ms. Brandt?

13 A 241 Northwest 32nd Street in Edgemere Park, Oklahoma
14 City.

15 Q And you're one of the daughters of Barbara Schwarz?

16 A Yes. I'm a oldest.

17 Q Are you currently married?

18 A Yes, I am.

19 Q Who is your husband?

20 A Steven Yike (phonetic).

21 Q What does he do?

22 A He's a medical doctor.

23 Q I want to just ask you a little bit about your
24 background and life with your mother. Where did you grew
25 up?

1 A We grew up in Yukon, Oklahoma.

2 Q Attended high school in Yukon?

3 A Yes. Graduated from Yukon High School in 1974.

4 Q After high school where did you go?

5 A Oklahoma State University.

6 Q What was your degree in?

7 A Elementary education.

8 Q Did you teach after you got out of school?

9 A For three years.

10 Q What grade?

11 A Fourth grade for one year, first grade for two

12 years.

13 Q My wife taught second grade for many years. Were

14 you as tired at the end of the day?

15 A I taught for three years.

16 Q I understand. You have how many sisters and

17 brothers?

18 A I have two sisters and two brothers.

19 Q What are their names?

20 A Margie is my sister who is two years younger. Than

21 I have a sister ten years younger than me, Julie. A

22 brother 16 years younger than me, Richard. Then my

23 stepbrother is Andy, and I believe he is 44.

24 Q Let's talk a little bit about your family. Your

25 natural father's name was?

1 A Leroy Brandt.

2 Q And he died when you were how old?

3 A I was 26. He died when he was 42.

4 Q So you and Richard and Margie and Julie are all the
5 natural children of your mother and Mr. Brandt?

6 A Correct.

7 Q A couple of years after your father's death, did
8 your mother remarry?

9 A Yes, she did. She married Charles Schwarz, I
10 believe, after daddy died.

11 Q And you mentioned Andy. Did Mr. Schwarz have a son
12 by his previous marriage?

13 A Yes.

14 Q So Mr. Schwarz's wife died, your dad died, and
15 eventually your mom and --

16 A I actually believe -- and Charles may correct me on
17 this -- I think the nuns at school set them up. Andy and
18 Richard were close in age.

19 Q All right. And they were married in 1982?

20 A Something like that.

21 Q Okay. Once they married, did all of you, the
22 brothers and sisters, all become one family?

23 A Oh, yes.

24 Q Did you come to view Charles as your dad?

25 A Absolutely.

1 Q And is he still a member of your family?

2 A Absolutely.

3 Q Tell me a little bit about growing up and the
4 household. Your father, your natural father, and your
5 mother started a business didn't they?

6 A Yes. Well, yes. My father -- my parents had a
7 hardware store in Yukon. And we lived in Oklahoma City.
8 And I believe when I was in 7th grade we moved to Yukon.
9 My dad worked at a hardware store in Chickasha, they we
10 moved to Yukon, and he started his own store there, kind of
11 a farm and hardware store. It was geared more towards the
12 farm element of it, plow shares and stuff.

13 And from the time we moved to Yukon when I was 13
14 I was taught how to run a register and make notes and all
15 of that. So it was family store. We all worked.

16 Q All right. And after your father's death, did your
17 mother continue to run the store?

18 A For a little while.

19 Q Okay. And what eventually happened with that?

20 A Well, a farm store is not really geared for a woman
21 to run. And I think she gave it a shot for my brother's
22 sake, but my mother, she graduated from high school, and
23 she had been a homemaker all her life. It just didn't work
24 out.

25 Q Okay. After she sold the business, what kinds of

1 things did she do?

2 A She just did little clothing things in her home,
3 sold clothes in her home, worked part time places. And
4 just kind of was always a homemaker and a mother.

5 Q Always a mother. What kinds of things was she
6 involved with you as you were growing up?

7 A Just everything. I think looking back, if my mother
8 had one crowning achievement and one crowning joy, like I
9 said she wasn't -- she graduated from high school. She
10 grew up as an only child in a house with her grandmother.
11 Her grandmother lived there. I know she was lonely, and
12 she got married when she was 18 right out of high school.
13 And I was born when she was 19, and she just wanted to have
14 kids and family and dogs and cats and pets. And all of us
15 just all around us, and that's what she got. Our house was
16 the house you hung out at.

17 Q Did all the other kids come to your house?

18 A Absolutely. In fact, last year or two years ago I
19 went to a high school reunion. And you just take things
20 for granted when you're young. Then as you're older, you
21 appreciate them. And several people commented, You know,
22 Sherry, you had the parents we all wanted.

23 Q After you grew up and were out on your own, did you
24 continue to have a good relationship with your mom?

25 A Yes.

1 Q How often would you see her?

2 A It would vary how much we saw each other. We talked
3 on the phone almost every other day. We never went a week
4 or two weeks without seeing one another, especially as we
5 got older. And just like I said, you take things for
6 granted when you're young. And when you're older, your
7 mother -- especially our age difference, really wasn't that
8 much, it was almost like my brother and I's age difference.
9 She was my best friend.

10 Q What kind of things did the two of you do together?

11 A Things girls do, moms and daughters do. We went to
12 lunch, we would go to the lake. Just hang out. We would
13 meet for Mexican food. Get mad at our boyfriends or
14 husbands we would meet up after that. Just things like
15 that.

16 Q Did you and your sisters and the rest of the big
17 family go together on trips from time to time?

18 A We always did.

19 Q Where would you go?

20 A I think that was one of mother's, like I said, one
21 of her major things in life was making sure we stayed
22 together as a family. Whether it was going to church, we
23 had to go together. I would say, Mom, I went to church
24 with my girlfriend when I spent the night with her. She
25 was like, No, we're going to church. We all go to church

1 together. We go on trips together. She would plan a
2 family vacation. It would be Six Flags when we were
3 little, or Colorado, or something like that.

4 Then as we were older and my sisters, we started
5 having our own families, maybe every other year we tried to
6 get together. It is harder when everybody had the little
7 kids. Usually, it is my sisters -- like a girl's thing --
8 me and her kids and mom we would go to, like, Dog Patch
9 USA, all those kid things.

10 Q And, in fact, you actually went on a trip with your
11 mother the weekend before her death, didn't you?

12 A Yes, I did.

13 Q Tell us about that.

14 A Well, I've told other people about this, and it was
15 basically one of those spiritual God things I think. I
16 think all of us -- and I look, and there a lot of women
17 here -- have these times in their lives when they're too
18 busy for their mother or for somebody -- and it would be,
19 like, mom would call, and I would be busy, and I would go,
20 It's mom, put the phone back in my pocket.

21 And I had a dream. It was not a good dream. And
22 I woke up that next morning, and I thought, Sherry, this is
23 your conscious talking to you. So I called my mother, and
24 I said, Mom, I've got to go to Dallas next week. And I
25 said -- and frequently she would do this with -- I said,

1 Drive to Dallas with me and we would stay at the hotel. I
2 would go and work, then we would meet up for dinner and
3 spend the night with each other and leave the next day and
4 go shopping or something.

5 And so I said, Go to Dallas with me, I've got to
6 go. She said, Okay. Then Margie found out about it, my
7 sister, and she wanted to go. Then her daughter Melissa
8 wanted to go who at the time was in college, or just out of
9 college. And so the four of us drove to Dallas together,
10 and it was a gift. It was the most beautiful weekend we
11 all had a good time. I slept with mom, Margie slept with
12 Melissa. We giggled. We laughed. We went to dinner
13 together. We grinned.

14 Margie and I went to dinner one night and Melissa
15 went out with a girlfriend, and we talked about when we
16 were little and what a good mom she was and how she played
17 with us and how we would go and look for quarters and the
18 go to Wilkenson's Drive-In and buy corn dogs, just things
19 like that. We drove home on Sunday. I hugged her, I
20 kissed her goodbye. And I said, I'll see you, and she died
21 on Thursday.

22 Q That was in September of --

23 A September 21st.

24 Q Let's talk about that a little bit. How did you
25 first find out that your mother had been involved in an

1 accident?

2 A I got a phone call on a Thursday evening, and I had
3 just got ten home from work, and they said mother had been
4 in an accident with Jean. And I had talked to mother
5 earlier in the day because Friday we were all going -- my
6 niece had bought a little home and she was working in
7 Oklahoma City, and I had fixed it up for her. And we were
8 going to have a little girl's happy hour. She was going to
9 invite some of her friends, my sister and mom.

10 And I talked to mom, and said she was at the lake.
11 And I said, Mom, I didn't even know you were going to the
12 lake. You just got back from Dallas. And I said, Oh,
13 yeah, I just decided to go to the lake with Jean. I said,
14 Well, don't forget about Friday. She said, I know, I know,
15 I will be home.

16 So when I got the phone call --and I don't know
17 what time it was -- but they said she had been in a wreck,
18 and obviously I'm thinking there was a collision of some
19 sort. I said, Well, is everything okay? It was -- it's
20 just kind of convoluted now, I just can't remember.
21 Anyway, everybody was saying they were busy and they
22 couldn't go. And I knew Charles was going down there.

23 And something inside of me said, Cancel your
24 appointments tomorrow and go. So I called Charles, and I
25 said, Charles, I am going to go with you. He said, Okay.

1 I have to pick up my breathing machine and do this other
2 thing and then I will be by to pick you up. So we were on
3 our way down to -- we found out mom was in Muskogee.

4 Q Initially, what was your first impression about how
5 serious the injuries were?

6 A I was under the impression it wasn't serious.

7 Q And then on the way to Muskogee, did you have any
8 conversations?

9 A Off and on with a lot of people. And I guess Julie
10 had called and talked to Milton, because Julie called me
11 and said, Mother has got a guardian angel. She said, There
12 is this man that went with mom from the wreck, and he is
13 waiting at the hospital. And I said, Oh, and she gave me
14 his cell number. But I called him on the way. I don't
15 know if I called mom's cell phone or if I called his cell
16 phone. And he said, Yeah, everything is okay.

17 And I said, Okay. I said, We're getting off on
18 the exit to Muskogee, but we don't know where the hospital
19 is. And I said, Can I talk to her? And he goes, No. He
20 said, She's out. I said, What do you mean?

21 MR. JENNINGS: Your Honor, forgive me for the
22 interruption. I think you excluded this in the hearing on
23 the motions before, trial testimony, statements from Mr.
24 Allen.

25 THE COURT: You're making a hearsay objection?

1 MR. JENNINGS: Yes, ma'am. But I am also just
2 citing the fact that this has come up before trial.

3 THE COURT: Counsel, please approach.

4 THE WITNESS: I'm sorry.

5 (The following bench conference was had outside the
6 hearing of the jury:)

7 MR. TEAGUE: Your Honor, I was pointing out to Mr.
8 Jennings that there was in the pretrial motions in limine
9 anything that Mr. Milton said to any of the family members
10 you have excluded.

11 THE COURT: Okay. Yes. Okay. And I think the
12 grounds was for hearsay.

13 MR. TEAGUE: That's correct.

14 MR. TAWWATER: So she can't say anything about
15 what Mr. Allen told her?

16 THE COURT: Exactly. And I had exclude that.

17 MR. TAWWATER: We weren't going to ask about the
18 accident, just what Mr. Allen was telling her about -- just
19 to explain why she did what she did it.

20 MR. TEAGUE: It's hearsay.

21 MR. TAWWATER: It is about her mother's condition.

22 MR. TEAGUE: It is hearsay.

23 THE COURT: Are you just going to ask her
24 questions about why she went to where she went?

25 MR. TAWWATER: Yes. And where she went next. One

1 of the things that is happening is he told her to come --
2 Milton Allen told her to come to the Muskogee Hospital.
3 And they did that because that's where they said they were.

4 THE COURT: But she is not go to go any further
5 and repeat what Mr. Allen told her about what her mother
6 said; that's what the subject of the motion in limine was.

7 (Within hearing of the jury:)

8 Q (By Mr. Tawwater) Go ahead and tell us what he told
9 you about her condition.

10 A He just said she was out. And it I, Oh, and that
11 was the first time I kind of had that sinking feeling. We
12 pulled into the hospital, we walked into the emergency
13 room. And there -- once again, that feeling was just in
14 me. And here was this man, and he was holding mom's hand,
15 and her hand looked so small. And I just thought, Who is
16 this?

17 Then all of sudden I thought, Oh, that must be Mr.
18 Allen. And I go, Milton, and he was like -- and I was
19 shocked to see mother the way she was. And I reached down
20 to kiss her. And he grabbed me and said, She's going to be
21 all right. And I was, like, Oh, she's going to be all
22 right. It was just, Oh, there was a relief in me.

23 And then all of a sudden EMTs came from
24 everywhere. And they were -- and I said, What is going on?
25 And they were making Charles fill out all this paperwork.

1 And I was kind of there and I was holding her head and
2 kissing her face. And they said, Oh, she has to go to St.
3 John's trauma center. And I said, What's wrong? I thought
4 she had a broken leg. They said, It is more serious than
5 that. Then they got ready to -- they put her on the little
6 gurney thing, and I looked over at Charles, and he comes
7 over. He said, Can Sherry go with her? And they said, No.
8 No. Then Charles and I got into the truck and headed
9 towards St. John's.

10 Q And that's where your mother was transferred to?

11 A Yes.

12 Q And when you got to St. John's what happened?

13 A They moved -- they took up to us up to a waiting
14 room upstairs, and it was pitch black. And we were the
15 only ones in there, and we weren't there very long and the
16 doctor came out and said he was sorry that there was
17 nothing he could do.

18 Q At that point had any of the other sisters or
19 Richard gotten there?

20 A No. But I had called them on the way from Muskogee,
21 and I said, This is bad. We all need to come to Tulsa.
22 And I think I called my husband and told him. Then Steve
23 called the sisters, the siblings, then they took us into
24 this little small room.

25 Q And so everybody was on their way to Tulsa when you

1 found out that she died?

2 A Yes.

3 Q What was your mother's health like before the
4 accident?

5 A Wonderful. I aspire to be a 70 year old like my
6 mother was.

7 Q Was she physically active?

8 A Very. She was yoga, she was walk every day. She
9 was good eater, better eater than me. She didn't drink.
10 She was in excellent physical condition.

11 Q Now, there was a time in 2007, a few months before
12 this event, where you and your sisters went with your mom
13 to the doctor; do you recall that?

14 A Yes.

15 Q Dr. Bourne?

16 A Yes.

17 Q Why did you go -- why did you want her to go to the
18 doctor?

19 A Basically for a wellness checkup. My mother was
20 just bad about going to the doctor. I don't think -- she
21 had not been to the doctor she had my brother. She -- even
22 though my sister had had breast cancer, she never even had
23 a mammogram. She just did not like to go. And we would
24 say, Mother, you need to go to the doctor. When you get
25 70, there are things that happen. You know, you can -- you

1 just need to be checked out and make sure everything is
2 okay if you want to still be having fun with us. She was,
3 like, I'm fine, I'm fine, I'm fine. So we just made that
4 doctor's appointment for her. And we said, Come on, let's
5 go, and then after the doctor appointment we will all go to
6 lunch.

7 Q During that visit did someone report that your
8 mother had been forgetful about some things?

9 A Yes. She mentioned it to me.

10 Q How big of a problem was that for your mother?

11 A I personally did not see it being any different on a
12 bigger -- you know, problem than I have. We would talk
13 about things. She would go, Oh, I forget this appointment
14 or I forget this appointment. And I said, Mother, you need
15 to start writing things down. But that is not the way she
16 flew. She did everything by the tail of her pants.

17 And I told people before we grew up in the best
18 household. It was loving. It was -- there was always this
19 kind of good going on, but we couldn't find the scissors.
20 We were late to school. But that was mother. She flew by
21 the tail of her pants. But that's when I said, Mother,
22 when you get to a certain age, you have to get a calendar
23 and writing things down and you will remember. She said, I
24 know, I know. And I went over to her house one day and she
25 had two calendars; one on the refrigerator and one by the

1 phone. And I was, like, Mom, one calendar.

2 Q So was she living independently doing all the things
3 she had always done?

4 A Very independent.

5 Q Drove a car?

6 A Yes.

7 Q Took care of the grandkids?

8 A Took care of the grandkids, did all of her yoga
9 exercises, walked every day, prayed every day, went to
10 dinner with her friends. She had friends. This will just
11 tell you, she had friends that ran the gambet. She had
12 friends that were 90, she had friends that were 20. And
13 these people like hung out with her. It is not, like, Oh,
14 she is kind of my friends. It is, like, she would be going
15 to dinner with girls that were, like, 30. Then the next
16 day she would be going to the show with somebody that was,
17 oh, know 20 years older than her.

18 Q And one of her friends was Jean Bookout?

19 A Yes.

20 Q And were they goods friends?

21 A They were very good friends. They both were
22 widowed.

23 Q Did you know Ms. Bookout?

24 A Yes.

25 Q As you were growing up and she was your mother's

1 friend?

2 A Yes.

3 Q How often would you see Ms. Bookout?

4 A Well, not as much as when I am older. I think Jean
5 and I and mom went to dinner a few times, you know, in the
6 past, you know, maybe five or six years before she left. I
7 went to Jean's house one night for dinner. When we were
8 smaller, we saw them more.

9 Q Now, after your mother's death, at some point you
10 and some of your family went to Washington to attend some
11 hearings. Do you recall that?

12 A Yes.

13 MR. JENNINGS: Objection, your Honor. Not
14 relevant. And I think --

15 THE COURT: I think this was subject to a previous
16 ruling, wasn't it.

17 (The following bench conference was had outside the
18 hearing of the jury:)

19 MR. BAKER: She can testify that she went.

20 THE COURT: Mr. Jennings, she can --

21 MR. BAKER: Testify they went. Is that wrong?

22 MR. JENNINGS: They can't go any further than
23 that.

24 THE COURT: If that's as far as you are going,
25 then I will allow that, but no further.

1 (Within hearing of the jury:)

2 Q (By Mr. Tawwater) And let me go back and ask you
3 again. You and your family went to Washington and saw some
4 of the hearing in congress?

5 A My sisters and I.

6 Q Okay. And I know I've talked to you about this
7 privately, but we need to talk to the jury a little bit.
8 Tell me about the relationship between your mother and your
9 sisters and your brother.

10 A We were just all extremely blessed to be so close.
11 And I think --

12 Q Sorry. Go ahead.

13 A Well, I think everyone knows, losing your mother is
14 a central event in every woman's life. And it changes the
15 family. It changes a family. In my family, the sisters
16 have kind of rallied around one another to create this
17 nucleus to keep us together. But with your mother gone,
18 it's kind of you want it to have that same holding power
19 that it had when your mother was there. And it's just,
20 it's hard. But we're all so close, and it's -- it's been
21 hard, but it's happened, I think. I think it's just -- it
22 just leaves this huge void.

23 Q I would like to put up Exhibit 7181. Tell us what
24 that is, Ms. Brandt.

25 A That was -- mother's birthday was March 23, and mine

1 was April 8, and we always celebrated our birthdays
2 together, the whole family, so we wouldn't have to have the
3 whole family come two weeks apart. So that was her 70th
4 birthday and my birthday on March before she died.

5 Q Now, it sure looks like in that picture that you and
6 your mother favor each other.

7 A I look like her.

8 Q Are your mannerisms the same?

9 A Oh, yeah.

10 Q People told you that talking to you is like talking
11 to your mother?

12 A After mother died, she had this group of friends
13 from our old parrish church, and they invited me to come.
14 And I was, like, at first, Oh, I don't know if I can do it.
15 And I went and they were all just smiling. And they were
16 saying, Having you around, Sherry, is like having Barbara.
17 It is like having Barbara here. And I was, like, Thank
18 you.

19 Q And next I would like to put up 7175, please. All
20 right. Tell us who is in that picture. And let's start
21 with --

22 A That's all the girls.

23 Q Obviously that is her on the left.

24 A That's mom on the left. That is my sister Margie
25 that is two years younger than me, that is my sister Julie

1 that is ten years younger than me, that's me, and then my
2 sister-in-law Connie. And that was my grandmother, and
3 that was her 93rd birthday.

4 Q How long ago was that picture taken?

5 A I don't know. I can't remember.

6 Q Okay.

7 A We were all alive and happy.

8 Q We talked a little bit about how you and your
9 sisters have come together and your brother after your
10 mother's death. How has your mother's death affected you?

11 A Like I said, it leaves a void. And anybody who has
12 lost their mother knows. It gets better with time, but it
13 never leaves you. There is not a day that goes by that I
14 don't think about my mother. There is not a day I try to
15 wear something of hers everyday. She died in September, I
16 was diagnosed with breast cancer in January, and I just
17 wanted my mom.

18 When we cleaned out her stuff, I remember going
19 through it, and I remember opening her lingerie drawer and
20 smelling her pajamas. And I just put them up to my face,
21 and I would just smell them. And I thought, I will put it
22 in a plastic bag. And I still have that in my drawer. And
23 every once in a while I just open it up and smell it. It
24 doesn't go away.

25 MR. TAWWATER: That's all I have.

1 THE COURT: Cross-exam.

2 MR. JENNINGS: Yes, ma'am. Thank you.

3 CROSS-EXAMINATION

4 BY MR. JENNINGS:

5 Q Good afternoon.

6 A Good afternoon.

7 Q I'm Jim Jennings.

8 A I know.

9 Q We met at your deposition back on August 28?

10 A I remember.

11 Q Have you had a chance to look at your deposition
12 before you came to court today?

13 A Yes.

14 Q I have it here if you need to look at it to refresh
15 your memory about anything. You probably won't because we
16 won't be talking together very long. I expect this to be
17 pretty brief. You told me on the occasion of your
18 deposition that you were known for looking like your mother
19 and being like your mother. Now seeing the pictures up
20 here, it is clear that you were the spitting image of
21 your mother. Probably I said that at the time of your
22 deposition. We talked about it.

23 A Thank you.

24 Q Not only do you look like her, but you told me then
25 and I think you said again today that your manner of

1 speaking and your mannerisms are very much like your
2 mother, right?

3 A Yes.

4 Q Okay. Now, you, as I understand it -- I don't know
5 if you said this today or not, I'm not sure if it went past
6 me or not -- but you're an interior decorator, right?

7 A Yes.

8 Q And your husband is a medical doctor,
9 anesthesiologist; is that right?

10 A Yes.

11 Q There are three daughters of Barbara Schwarz and one
12 son, correct?

13 A Yes.

14 Q Are you expecting that your siblings, your sisters
15 at least, are going to be witnesses in this case before it
16 ends?

17 A I think they're on the list.

18 Q Okay. I think so too. Your mother at the time of
19 her death was how old?

20 A Seventy.

21 Q And you mentioned this a few minutes ago, let me ask
22 just a little bit about this. In the few months preceding
23 your mother's death, you and your sister developed some
24 concerns about her health, didn't you?

25 A Well, I don't know if we developed concerns. We had

1 all talked about that she needed a wellness check just from
2 the standpoint of her being 70 years old and her not ever
3 going to a doctor.

4 Q Right. But it was a little more than that, wasn't
5 it? You and your sisters actually took, kind of conspired,
6 to take your mother -- I mean in a helpful generous way --
7 to take your mother to the doctor, didn't you?

8 A We all went together.

9 Q Right. And --

10 A Conspired, no.

11 Q Okay. Well, maybe that was poor choice of a word.
12 You and you sisters did kind of an intervention to get your
13 mother to the doctor, didn't you?

14 A We all got together, said, Mom, you need to go to
15 the doctor. She said, Okay, we will go to the doctor then
16 we will go to lunch.

17 Q Right. And it was a surprise to her when you told
18 her that, wasn't it?

19 A No. I mean, a surprise. We said, Mother, you need
20 to go to the doctor. She said, Okay.

21 Q But it was you needed to go to the doctor right now?

22 A We didn't, like, hog tie her and take her to the
23 doctor.

24 Q I was just asking you this: It was something you
25 announced to her and you did it at that time, right?

1 A Yes.

2 Q Okay. And, in fact, I understand from talking to
3 you and to your sisters that your mother was angry about
4 it, wasn't she?

5 A Pardon me? Angry?

6 Q Yes, ma'am.

7 A No. I don't thing she was angry. She was, like,
8 Girls. I mean, she wasn't, like, mad at us angry.

9 Q Okay. And your took your mother to see Dr. Bourne,
10 Dr. Catrina Bourne in Yukon, right?

11 A Yes.

12 Q And did you sit there with your mother and your
13 sisters and tell Dr. Bourne what your concerns were?

14 A Yes.

15 Q And did you tell Dr. Bourne on that occasion that
16 you and your sisters were quite concerned about your
17 mother's forgetfulness and her worsening mental abilities?

18 A I don't remember those words.

19 Q Do you think that is not a correct statement of what
20 occurred, or you just don't remember?

21 A I think we talked about forgetfulness. I don't
22 think deteriorating or whatever you said. Mother is
23 forgetting things, we talked about it.

24 Q Was it true, ma'am, that your mother had become
25 increasingly depressed and anxious during this period of

1 months preceding the meeting with Dr. Bourne?

2 A You had asked me that in the deposition. I did not
3 see that. I had mentioned to you, and I will say it again,
4 that my mother and I's relationship wasn't about
5 depression. I remember my mother as when I was depressed I
6 would come to her. When she was having a bad time, she
7 would come to me. I don't remember depression or anxiety
8 as you mention.

9 Q Do you remember from talking to your sisters, who
10 also were very close to your mother, that had been an
11 increasing problem with your mother being depressed and
12 anxious; do you recall that?

13 A Maybe some anxiety. I don't remember depression.

14 Q Were you actually present in the room there at Dr.
15 Bourne's when Dr. Bourne gave your mother a test, a mental
16 test?

17 A Yes.

18 Q Do you remember that that's called a I think
19 Folstein Mini Mental State Examination? Do you remember
20 that?

21 A I remember her giving a test.

22 Q So did you actually sit right there at the table or
23 in the room with your mother while she was taking the test?

24 A Yes.

25 Q All right. And did your sisters actually sit right

1 there in the room?

2 A Yes. We were all together.

3 Q Sure. So you actually watched your mother take the
4 test and write down the answers, right?

5 A Yes.

6 Q All right. And this is what basically a -- this
7 isn't it, but it is basically a one-page or so test, isn't
8 it?

9 A Yes.

10 Q Okay.

11 A I think so.

12 Q And do you recall -- do you recall actually seeing
13 the written test after your mother had taken it?

14 A I don't recall seeing it.

15 Q Okay. If I showed it to you now, would you be able
16 to tell us that is the test that your mother took?

17 A Uh-huh.

18 Q Okay. Let me just show this to you. It is
19 Defendants' Exhibit No. 28.1. And in just a minute we will
20 put it up. Let me show you, ma'am, what is marked as
21 Defendants' Exhibit No. 28.

22 A I will need some glasses.

23 Q Do you recognize that, ma'am, as the test that was
24 given your mother that day by Dr. Catrina Bourne?

25 A I didn't look at the test, but it's obviously the

1 test.

2 Q Okay. And do you see there that the first section
3 of the test is orientation, basically who, what, when and
4 where? That kind of origination? Do you see that, ma'am?

5 A Yes.

6 Q Do you see the first question there which is what is
7 the year?

8 A Yes.

9 Q And do you see the answer that your mother gave?

10 A 1497, Summer 6/15.

11 Q Actually, I think it says 1997. Let's put it up.

12 MR. JENNINGS: Judge, I move the admission of this
13 document.

14 MR. TAWWATER: No objection.

15 THE COURT: Okay.

16 Q (By Mr. Jennings) We're on the orientation part of
17 the test. The quest is what is the year. And do you see
18 that? It says, I would take that to be 1997. Is that the
19 way it looks to you?

20 A Are you talking to me?

21 Q Yes, ma'am.

22 A Yes. Looks like 14.

23 Q And do you see that the date is given as 6/15, and
24 do you recall that the date was actually 6/11, June 11?

25 A I don't recall the date.

1 Q Okay. We will move on down. Well, before we do
2 though, let's stay right there. Do you see where it says
3 over on the left maximum score?

4 A Okay.

5 Q Do you see it says maximum score on the left, and do
6 you see the score that your mother actually received on the
7 right?

8 A Yes.

9 Q She got three out of five, right?

10 A Yes.

11 Q Okay. And if you move on down to the next section
12 of the test is one called registration I see. She scored
13 three out of three on that, apparently. If you go on down,
14 there is one called attention and calculation. And then
15 there is one called recall right there. Mr. Doyle, let's
16 highlight the recall section right there.

17 This says, ma'am, under recall ask the patient to
18 recall three objections learned above, the ball, the flag
19 and the door. Give one point for each correct answer, each
20 one remembered. Do you recall that your mother was not
21 able to remember any of those from the top part of the
22 test?

23 A I do now.

24 Q So she stored zero out of three on the recall
25 section of the test, right?

1 A Okay.

2 Q And then you come down to the language part of the
3 test. And do you see that she scored, what, there eight
4 out of the nine possible?

5 A Okay.

6 Q This is all consistent with your memory of the
7 events that things went that day?

8 A I guess. It was six years ago.

9 Q Okay. Well, if you go on down a little farther in
10 the test, you see it says, Write a sentence. And you get
11 one point for that. Do you recall the sentence that your
12 mother wrote?

13 A I'm scared.

14 Q Actually --

15 A I'm so, so scared.

16 Q It's, I'm so scared, right? Now go back to the
17 preceding page. And do you see at the bottom right down
18 there we have the total score, and that is 24 out of 30.
19 Do you see that?

20 A Yes.

21 Q Okay. Now, if you go up just a little bit from
22 that, over to the right you see an area called
23 visuospatial. We will understand more what that means in a
24 minute, the visuospatial part of the test, do you see the
25 score that your mother received for that?

1 A Yes.

2 Q What was it?

3 A Says zero.

4 Q Yes, ma'am.

5 A Yes.

6 Q And if we go to the next page, I think this is

7 probably what that relates to. Do you remember how this

8 part of the test worked?

9 A No.

10 Q Do you remember that these figures appear here and

11 your mother was asked to just draw the same figure right to

12 the right of it, and she wasn't able to do it, was she?

13 A It doesn't appear so.

14 Q And so after this test was given, did Dr. Bourne

15 order further medical tests for your mother?

16 A No.

17 Q Was there an actual CT scan of her brain that

18 occurred after this, or down about that?

19 A Oh, I do remember that.

20 Q So it was after this test was given, after this

21 visit to Dr. Bourne, and because of the results on this

22 test, that Dr. Bourne ordered the CT scan of the brain,

23 right?

24 A Yes.

25 Q Okay. And do you recall visiting with Dr. Bourne

1 about the results of that?

2 A I did not.

3 Q Do you recall the ultimate diagnosis that was given
4 to you by Dr. Bourne about your mother's condition?

5 A You mentioned it in the deposition. I can't
6 remember it.

7 Q It was she was diagnosed with mild dementia; isn't
8 that correct?

9 A Okay.

10 Q Does that sound familiar to you?

11 A Okay. Yeah.

12 Q Okay. And after this diagnosis was made, certain
13 medications were prescribed by the doctor to treat your
14 mother's condition, right?

15 A Yes.

16 Q Now, you know, don't you, ma'am, that at the time of
17 the accident Jean Bookout and your mother were over in
18 McIntosh County for a trip to your family's lake house,
19 your folks had a lake house over on Lake Eufaula at Snug
20 Harbor, right?

21 A Yes.

22 Q Now, Jean Bookout was driving on this occasion, but
23 on prior occasions when such trips had been made your mom
24 would drive and Jean Bookout would be the passenger, right?

25 A Yes.

1 Q And so it was unusual for a trip of this type to be
2 made where your mother was the passenger and not the
3 driver; isn't that right?

4 A Yes.

5 Q Okay. So you know that Jean Bookout wasn't as
6 familiar with this area as your mother, and so your mother
7 would have to be the person who would be giving the driver
8 directions to and from the lake house, right?

9 A I don't know that.

10 Q Do you know for a fact that your mother was far more
11 familiar with this area than Jean Bookout was?

12 A Just by her being around there. Yes.

13 Q Okay. And by the time you heard about the trip to
14 the lake, they were already at the lake, right?

15 A Yes.

16 Q Now, you said that you had known Jean Bookout for a
17 long time. She and your mother had been friends for
18 probably 40 years or so, hadn't they?

19 A Yes.

20 Q And if your mother was 70 at the time of the
21 accident, can you tell us either exactly or approximately
22 how old Jean Bookout would have been at that time?

23 A No.

24 Q Was she older than your mother?

25 A I don't know how old Jean is.

1 Q We will find that out later then. Now, I've seen
2 since this trial has been underway, that you have been
3 sitting out here with Ms. Bookout from time to time. Is
4 this the first time you have seen her since this accident
5 occurred?

6 A No.

7 Q Well, up to the time of the deposition that you gave
8 on August 28, 2013, just two months ago, less than two
9 months ago, was it true that you hadn't seen Jean Bookout
10 since the accident?

11 A I saw her at the mediation.

12 Q Okay. Except for court proceedings and if -- you
13 hadn't seen Jean Bookout since the accident; is that right?

14 A That's correct.

15 Q So it's true, isn't it, that between 2007, when the
16 accident happened, and 2013, the year we're now in you
17 didn't see Jean Bookout at all, did you?

18 A Not between now and the mediation.

19 Q Okay. And you hadn't spoken to her, had you?

20 A No.

21 Q And, in fact, you and your family actually made a
22 claim against Jean Bookout for wrongful death of your
23 mother, didn't you?

24 A Yes.

25 Q You made a claim in which it was said --

1 MR. TAWWATER: May we approach, your Honor.

2 THE COURT: Yes.

3 (The following bench conference was had outside the
4 hearing of the jury:)

5 MR. TAWWATER: My understanding was the court said
6 that they can ask if a claim was made, and that was it.

7 MR. TEAGUE: That's not true.

8 MR. JENNINGS: I have it right here.

9 THE COURT: What I remember ruling is that you can
10 reference the letter about whether or not that the attorney
11 used the word negligence, because it goes your negligence
12 claim, and contributory negligence is what I'm excluding.

13 MR. JENNINGS: This is the exhibit that I hoped to
14 use.

15 MR. TEAGUE: The letter was not excluded, your
16 Honor.

17 THE COURT: I don't know if we even talked about
18 that.

19 MR. JENNINGS: Judge, the jest of it, of course,
20 they blamed her for the accident and thought that she was
21 negligent and caused the wrongful death; that is our
22 defense in this case. So this is supportive of our defense
23 of a lack of causation.

24 MR. TEAGUE: That is a lawyer that has entered an
25 appearance in this case.

1 THE COURT: What I said previously would be
2 excluded was anything about any settlement or the amount of
3 any monies paid. But she could talk about making a claim.

4 MR. TAWWATER: We will object to this letter.

5 MR. JENNINGS: And the part about insurance, you
6 also excluded that. So we've redacted it in such a way as
7 to exclude that.

8 MR. TAWWATER: Number one, your Honor, this lady
9 has never seen this letter. Number two, this is an offer
10 of compromise and settlement, which those are never
11 admitted into evidence in my experience.

12 MR. JENNINGS: It is not an offer of compromise
13 and settlement, it is a demand for payment.

14 THE COURT: We will deal with this later when we
15 see whether she can lay a foundation. Do we know at this
16 point in time was he representing the children and Mr. --

17 MR. JENNINGS: The estate.

18 MR. TAWWATER: He was representing the estate.

19 (Within hearing of the jury:)

20 MR. JENNINGS: Can I ask one quick question from
21 here?

22 THE COURT: Yes.

23 Q (By Mr. Jennings) One of the lawyers that
24 represents your family, I don't think has been here this
25 week, but I think he was here last week. Paul Martin from

1 Ponca City. Have you met him?

2 A Yes.

3 Q Let me show you -- and he was representing you. I
4 mean, back up just a minute. He was representing you with
5 respect to the claim that I just mentioned, right.

6 MR. TAWWATER: Objection, your Honor. He clearly
7 states he is representing the estate.

8 THE COURT: Restate.

9 Q (By Mr. Jennings) Let me get precise. That lawyer,
10 Paul Martin, was representing the estate of Barbara Schwarz
11 with respect to the making of the claim against Jean
12 Bookout, right?

13 A That's my understanding.

14 Q Let me show you what is marked as Defendants'
15 Exhibit No. 24. Are you aware of -- have you seen before,
16 that document, ma'am?

17 A I don't recall seeing it.

18 Q Do you recall that there was such a document, a
19 document that related to the making of the claim that you
20 said was made against Jean Bookout?

21 A I don't recall the documents. There was a lot going
22 on during that time. They're obviously here. So, yes.

23 Q So, yes, there was such a document and it related to
24 that?

25 A Yes, here it is.

1 Q Pardon me?

2 A Yes, here it is.

3 Q Okay.

4 MR. JENNINGS: Move the admission of that letter,
5 your Honor.

6 MR. TAWWATER: I still don't think a foundation
7 has been laid for this by this witness for this document,
8 your Honor.

9 MR. JENNINGS: She said this was it.

10 THE COURT: Well, I think she said she knows there
11 is a claim because here it is, not that she knew at the
12 time. Lay a foundation that she knew at the time, or just
13 go outside the letter and ask her what the nature of the
14 claim was.

15 MR. JENNINGS: Sure. All right.

16 Q (By Mr. Jennings) That's really what I'm getting
17 to. What is the nature of the claim that was made against
18 Jean Bookout by the estate of Barbara Schwarz?

19 A Do you want me to read this?

20 Q Sure.

21 THE COURT: Not out loud. Read it to yourself.
22 Se if that refreshes your memory.

23 THE WITNESS: Okay.

24 Q (By Mr. Jennings) Go ahead.

25 A What?

1 Q The last I think the last question was what was the
2 nature of the claim that was being made, essentially?

3 A It was a claim against an insurance company, I
4 guess, against Jean's insurance company.

5 Q Was it a claim, ma'am, that was first for the
6 wrongful death of Barbara Schwarz which was alleged to have
7 been caused by Jean Bookout?

8 A Yes.

9 Q Did the lawyer make -- that was hired by the estate
10 -- make an investigation into the accident before making
11 this claim?

12 A I assume so.

13 Q Okay. In fact, it says that, doesn't it?

14 A I guess. Yes.

15 Q Okay.

16 A I'm kind of nervous, so just -- okay.

17 Q Do you recall, ma'am, what the result of the
18 investigation that led to the making of the claim was?

19 A No.

20 Q You just recall that there was an investigation and
21 based upon that a claim for wrongful death was made against
22 Jean Bookout for the wrongful death of your mother, right?

23 A Yes.

24 Q Okay.

25 MR. JENNINGS: Your Honor, if I may, I will submit

1 the exhibits at a quieter time on a break.

2 THE COURT: That's good.

3 MR. JENNINGS: For now I will just move on.

4 Q (By Mr. Jennings) Who was the administrator of the
5 estate of your mother?

6 A Charles Schwarz.

7 Q And also your brother Richard?

8 A Yes.

9 Q So they were -- were they the persons who were
10 representing the estate?

11 A I think Charles took care of everything for us.

12 Q Thank you very much.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 BY MR. TAWWATER:

16 Q Ms. Brandt, on when this claim was made, did you or
17 your sisters or Charles know that after Toyota went to
18 their electronic system that they had a 400 percent
19 increase in unintended accelerations?

20 MR. JENNINGS: Objection, your Honor.

21 THE WITNESS: No.

22 MR. CLARK: Excuse me. That misstates the
23 evidence, and it is outside the scope of the knowledge of
24 this witness.

25 THE COURT: Overruled.

1 Q (By Mr. Tawwater) Did you know?

2 THE COURT: Ma'am, whenever Mr. Jennings stands
3 up, he will be making an objection, so do not answer until
4 I ruled on his objections.

5 THE WITNESS: Sorry.

6 Q (By Mr. Tawwater) At the time that this claim was
7 made -- and this was a month after the accident, correct?
8 What Mr. Jennings was just talking to you about happened
9 about a month after the accident, didn't it?

10 A Yes.

11 Q And at that time, did you know that 70 percent of
12 the claims of unintended acceleration had nothing to do
13 with sticky pedals and floor mats?

14 A No.

15 MR. JENNINGS: Objection, your Honor.
16 Insufficient, inadequate and incorrect premise.

17 THE COURT: Okay. Overruled.

18 Q (By Mr. Tawwater) At the time that you made the
19 claim, did you know that in 2004 60,000 claims of
20 unanticipated acceleration had been made with Toyota?

21 A No, we did not.

22 MR. JENNINGS: Same objection.

23 THE COURT: Overruled.

24 Q (By Mr. Tawwater) At the time that you made the
25 claim, had you been to Washington, D.C., and heard Mr.

1 Lentz from Toyota testify?

2 A No, we had not.

3 Q Counsel asked you about your mother's mental
4 capacity. Let me ask I will read you some testimony that's
5 come out in this courtroom, and then I want to ask you a
6 question, okay?

7 A Okay.

8 Q First I will read the testimony from Katherine
9 Western. The jury has heard that -- you weren't able to
10 hear it because you weren't in here until you testified.

11 MR. JENNINGS: Excuse me, Judge, this is outside
12 the scope of cross-examination.

13 MR. TAWWATER: This goes --

14 THE COURT: Gentlemen, are the questions going to
15 go with regard to her mental capacity?

16 MR. TAWWATER: Yes, ma'am. I'm lay a predicate.

17 MR. JENNINGS: Then I have no objection.

18 THE COURT: Okay.

19 Q (By Mr. Tawwater) All right. So Katherine Western
20 has testified in this court about your mother. Now, do you
21 know who Katherine Western is?

22 A No. I know the name.

23 Q If I tell you that she's the very first person --

24 A I knew that.

25 Q -- that talked to your mother after the accident you

1 know that? And she sat there on the side of the car with
2 your mother --

3 A I knew that.

4 Q -- right after the accident? And she's testified
5 that your mother was telling her that the driver, which
6 would be Jean Bookout, could not stop the car and that
7 herself, the passenger, your mother was the passenger,
8 couldn't understand why the car would not stop. And that
9 the driver could not get the car to stop and that she
10 didn't understand why the car wouldn't stop.

11 And she also testified the reason I remember this
12 was, Mrs. Western, is because when she sat there and she,
13 meaning your mother, was saying she didn't understand why
14 the car couldn't stop, she also made mention that Ms.
15 Bookout had pulled the emergency brake up, why could they
16 not stop. There has also been testimony in this courtroom
17 from Milton Allen.

18 MR. JENNINGS: That is a lengthy narrative.

19 THE COURT: Can you ask a question based on that
20 portion that you read in so far?

21 MR. TAWWATER: I can. And I will read two more
22 and ask the same questions.

23 THE COURT: I want to hear where you're going with
24 this before I allow it.

25 MR. JENNINGS: Do I understand that the ruling is,

1 Judge, that evidence relating to the Mrs. Schwarz' mental
2 --

3 THE COURT: I have told you no speaking
4 objections. Come up.

5 (The following bench conference was had outside the
6 hearing of the jury:)

7 MR. JENNINGS: Judge, I don't know what the --
8 what is being allowed and what is not being allowed. Is he
9 going to be allowed to essentially read the deposition --

10 THE COURT: That's what --

11 MR. JENNINGS: -- of Katherine Western and then
12 have her say whether she agrees with it?

13 THE COURT: I don't know because we haven't gotten
14 to a question now. That's what I stopped him and told him
15 to ask a question with what he read so far so I can hear
16 how he is going to tie this in before I allow more passages
17 in.

18 MR. JENNINGS: I understand that, and I'm not
19 trying to be a problem here but rather than listening to
20 the lengthy, lengthy questions, which consists of quoting
21 someone's deposition, can we anticipate at this point --

22 THE COURT: Well, we will hear the question;
23 that's why I told him not to read the rest of it yet.

24 (Within hearing of the jury:)

25 Q (By Mr. Tawwater) All right. Now, knowing your

1 mother, and knowing your mother's mental capabilities, you
2 had just been on a trip with her the weekend before, is
3 there anything that you can think of that would have
4 prevented your mother from telling Katherine Western the
5 truth?

6 A Absolutely not.

7 Q Was there anything about what she told Katherine
8 Western that would indicate any forgetfulness on the part
9 of your mother?

10 A No. Quite the contrary.

11 Q All right. There has also been testimony in this
12 court that Milton Allen -- from Milton Allen, who said that
13 your mother told him --

14 MR. JENNINGS: Objection, your Honor. I think
15 that has been dealt with on --

16 THE COURT: This is what Milton Allen told Ms.
17 Schwarz, not --

18 MR. JENNINGS: What she told him is what the
19 question goes to.

20 MR. TAWWATER: I'm just repeating what Mr. Allen
21 testified to on the stand in front of the jury about what
22 Ms. Schwarz told him.

23 THE COURT: This isn't what Mr. Allen may have
24 told the witness that Ms. Schwarz said, which was the
25 subject of the motion in limine.

1 MR. JENNINGS: He's asked.

2 THE COURT: He is just repeating the testimony
3 that was read into evidence, and I will allow it.

4 MR. JENNINGS: Please show my objection.

5 Q (By Mr. Tawwater) And the testimony from Mr. Allen
6 was that your mother told him that she was repeating over
7 and over again, The car wouldn't stop. No matter what Jean
8 did, the car wouldn't stop. And so let me ask you: Based
9 on your knowledge of your mother's mental capacity, is
10 there any reason why you believe that she would not have
11 been able to tell Mr. Allen accurately and correctly what
12 she told him at the scene of the accident?

13 A No.

14 Q And, finally, the EMT who testified in this case,
15 who also talked to your mom at the scene, said that your
16 mom told her that the car wouldn't stop, and she kept
17 repeating it wouldn't stop. Is there anything you know of
18 in your mother's mental capacity that would have prevented
19 her from accurately telling Star Caudle what had happened
20 in accident?

21 A No.

22 Q Do you see any evidenced in what she told Star
23 Caudle to indicate that your mother had a problem with
24 forgetfulness at the scene of the accident?

25 A No.

1 THE COURT: Ms. Brandt, you may step down. Do you
2 anticipate recalling her for any reason?

3 MR. JENNINGS: No, ma'am.

4 THE COURT: Then, Ms. Brandt, you can now stay in
5 the courtroom. You are no longer excluded from the
6 courtroom since you have testified. But, again, do not
7 discuss anything you hear in the courtroom with any witness
8 that will be testifying in the future?

9 THE WITNESS: Thank you.

10 THE COURT: And plaintiffs you can call your next
11 witness.

12 MR. BAKER: Yes, your Honor.

13 THE COURT: Mr. Jennings, we will deal with the
14 exhibits at the next break.

15 MR. JENNINGS: Thank you.

16 MR. BAKER: Your Honor, at this time we call by
17 video deposition employee of Toyota Chris Santucci.

18 THE COURT: Okay. And that's the one that is
19 lengthy, correct?

20 MR. BAKER: Approximately two hours.

21 THE COURT: Okay. Do you want at break now, or go
22 for a while? No break. Let's go for a while.

23 MR. CLARK: Subject to our prior objections.

24 THE COURT: Yes. Everything is subject.

25 (Whereupon, the video deposition of Chris Santucci

1 was played. Not on the record.)

2 THE COURT: We're in recess until 3:00; that is
3 about 15 minutes. All rise while the jury exits.

4 (Whereupon, a short recess was had.)

5 MR. JENNINGS: Defendant moves admission of
6 Exhibit 24, which is the demand letter submitted by Paul
7 Martin, the lawyer for the estate of Barbara Schwarz for
8 the wrongful death of Barbara Schwarz. The witness Sherry
9 Brandt who is a member of the family and a beneficiary of
10 the estate conceded that such a claim had been made.

11 And this letter constitutes a vicarious admission
12 of the plaintiff. It is made by the lawyer for the -- I
13 said defendant, I should have said plaintiff, I think --
14 but it is made by the lawyer for the plaintiff. And it
15 includes a statement of fact that an investigation had been
16 conducted and that a determination had been made that the
17 wrongful death of Barbara Schwarz was caused by the
18 negligence of Jean Bookout. That's the kind of evidence
19 that the court ruled at the motion in limine hearing would
20 be allowed. And that is that the essence of the
21 defendants' defense; that is alternative causation,
22 something other than the alleged product defect.

23 THE COURT: Let me ask this: Is Charles Schwarz
24 or Richard Brandt, either one of the personal
25 representatives, going to be testifying?

1 MR. TAWWATER: Yes.

2 THE COURT: I definitely think you can get it in
3 through one of them. The only concern I have here is she
4 was one of the heirs, but wasn't the estate and she hadn't
5 seen it. And I think you will get it --

6 MR. JENNINGS: We will hit the pause button.

7 MR. PORTIS: How do they get past hearsay?

8 THE COURT: It is their agent. I am not allowing
9 it in through her, that is why I am saying I will consider
10 it through the personal representatives. Because,
11 obviously, it is on behalf of the estate, they're doing it
12 on behalf of the personal representatives without a
13 question of what the heirs may or may not have known is
14 another issue.

15 MR. BAKER: I thought we made it clear that in the
16 motions in limine they were going to be able to ask about a
17 claim, get an answer, and that was going to be it. This
18 letter was not going to be part.

19 MR. TEAGUE: That is not accurate.

20 THE COURT: I don't remember actually --

21 MR. TEAGUE: She ruled --

22 THE COURT: Let me talk about what I ruled. What
23 I specifically ruled was that the dollar amount and any
24 type of settlement. We didn't specifically address because
25 what I anticipated them doing, because of your negligence

1 claim, is using this as at a minimum as a contributory
2 negligence issue on behalf of Ms. Bookout and also to
3 dispute. So I'm in all likelihood going to allow this to
4 come into evidence if a foundation is laid through one of
5 the personal representatives.

6 MR. BAKER: Then we want the opportunity to come
7 back and offer evidence that they settled for \$1.6 billion.

8 THE COURT: What does that have anything to do
9 with anything?

10 MR. BAKER: It is our car. On our car.

11 MR. TAWWATER: This is no more an admission than
12 that is an admission with regard to this specific car.

13 THE COURT: We're not there yet, but we will
14 certainly take that up. What you are wanting to do is to
15 bring into evidence as an admission against interest that
16 they settled. Was part of the settlement a disclaimer of
17 any type of liability?

18 MR. JENNINGS: I sure you have -- this is not
19 proof that --

20 MR. TAWWATER: I'm sure there was in that too.

21 MR. JENNINGS: This is not proof of a settlement,
22 this is the proof of a making of a claim, the conclusory
23 statement the driver Jean Bookout was at fault; that's what
24 this is about.

25 MR. TEAGUE: It is also an admission against their

1 interest that is contrary to the position that they're
2 taking in this lawsuit.

3 MR. BAKER: Same way with that lawsuit.

4 THE COURT: We will deal with that later whether
5 the settlement agreement in the MDL will come in.

6 MR. CLARK: Your Honor, I would also like to make
7 a record on this question that Mr. Tawwater asked.

8 THE COURT: And I want to say something right now
9 with everyone here. From now on, for each exhibit, each
10 witness, one attorney speaks from both side. I don't want
11 you-all teaming or tag teaming me anymore. What do you
12 want to say?

13 MR. CLARK: This question that Mr. Tawwater asked
14 about 60,000 complaints of unintended acceleration is a
15 complete misstatement of the record, your Honor. In fact,
16 I think it is clearest, given where we are in the trial, in
17 Mr. Santucci's testimony, pages 315 and 316, he is quoting
18 from an e-mail sent by a Japanese fellow named Mitch Kato,
19 K-A-T-O. And what Mr. Kato explains is they ran this
20 search of Camry complaints that included the word surge,
21 search on surge, S-U-R-G-E, and that's where they got the
22 60,000 complaints.

23 Now, the court ruled this morning, quite rightly,
24 the transmission surge in these early Camrys is not going
25 to come in because it can have a variety of causes, some of

1 which might be related to this lawsuit, but a number of
2 which, unarguably are not. So to say that is 60,000
3 unintended acceleration complaints, I will readily admit
4 that there are probably unintended acceleration complaints
5 in that group, but to say that all 60,000 is unintended
6 acceleration finds no support in the record anywhere.

7 THE COURT: Okay. Was it Mr. Lentz? Who has
8 mentioned the 60,000 figure before?

9 MR. BAKER: It is coming in this deposition.

10 THE COURT: Whose?

11 MR. BAKER: Santucci.

12 THE COURT: And that's the portion he was just
13 reading me?

14 MR. BAKER: I'm not sure.

15 THE COURT: 60,000 including surges. I don't even
16 know what the question was now.

17 MR. CLARK: I think the question was at the time
18 that you made this claim were you aware that there had been
19 60,000 complaints of unintended acceleration in 2004. Was
20 that close?

21 MR. TAWWATER: That is close.

22 MR. CLARK: I think that's about what the question
23 was.

24 MR. BAKER: The question was merely asking her
25 what her knowledge was, your Honor. And he is allowed to

1 ask here if she is aware of that sort of thing. That's
2 what he did. The testimony from Mr. Santucci that is about
3 to come in, he will be questioned about 60,000 claims and
4 the fact that Toyota only produced 124 to NHTSA.

5 THE COURT: And I think his point is that 60,000
6 figure, it included key words with the words surge and he
7 is saying that is not all unintended acceleration.

8 MR. BAKER: That's argument, your Honor.

9 MR. CLARK: If Mr. Tawwater wants to ask about
10 60,000 claims that is a different question than 60,000
11 claims of unintended acceleration, which there is no
12 evidence of in the record.

13 THE COURT: I'm not going to go back and do
14 anything about that now, but I caution you to be careful
15 when you use the 60,000 figure.

16 MR. CLARK: I think that's all we have.

17 (Whereupon, a short recess was had.)

18 THE COURT: We're back on the record. We're
19 continuing with the video testimony of Mr. Santucci. Are
20 we ready to go?

21 MR. BAKER: Yes, ma'am.

22 (Whereupon, the video deposition of Mr. Santucci was
23 continued. Not on the record.)

24 THE COURT: I'm sure you heard there is about 45
25 minutes left on this deposition. We will take it up in the

1 morning, and they will have call Michael Bookout as their
2 next witness.

3 Raise your right hand, please.

4 (Witness sworn.)

5 MIKE BOOKOUT,

6 called as a witness, after having been first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BAKER:

10 Q Tell us your name, please.

11 A Mike Bookout.

12 Q And is Jean Bookout, who is sitting back over here,
13 is that your mother?

14 A Yes, sir.

15 Q Tell me where you live.

16 A I live in Oklahoma City.

17 Q And what do you do for a living?

18 A I work for the Oklahoma Department of Agriculture.
19 I'm an inspector for them.

20 Q Are you married?

21 A Yes.

22 Q Do you have any children?

23 A I have two children, a girl and a boy.

24 Q Are they grown?

25 A Yes.

1 Q Is your dad still alive?

2 A No, sir.

3 Q When did he pass away?

4 A 1976.

5 Q And do you have any brothers or sisters?

6 A I have one sister.

7 Q What is her name?

8 A Her name a Diana Bryant.

9 Q Where does she live?

10 A Moore, Oklahoma.

11 Q We haven't seen her while we have been here this

12 week; is that right?

13 A No, sir.

14 Q Does she have a medical condition?

15 A Yes. And her husband is ill also, so she stays home

16 mostly.

17 Q I will come back and ask you some things about your

18 mom. But the first thing I want to ask you is can you tell

19 me were you were on September 20, 2007, when you heard

20 about the wreck?

21 A We were having a retreat with the Department of

22 Agriculture. I was down at Lake Murray Lodge.

23 Q What were you doing at the time that you heard

24 about?

25 A I think we just adjourned from supper.

1 Q How did you find out about the wreck?

2 A I got a phone call from my wife.

3 Q About what time was it; do you remember?

4 A Around 6 or 7 in the evening.

5 Q All right. What did you learn from your wife? Did
6 she know what your mother's condition was?

7 A No, sir. Not at this time. Not much information
8 was known, it was just there had been a serious accident.
9 She was going to be flown to Tulsa, and that was about the
10 extent of knowledge that I had at that time.

11 Q At that time, what did you decide to do?

12 A I asked my supervisor for a car. I didn't have my
13 personal car there, and drove that back to the Oklahoma
14 City area and got my car and went to Tulsa. And my
15 daughter joined me that night.

16 Q All right. When you got -- and did you go to the
17 hospital?

18 A Yes, sir.

19 Q When you got to the hospital were you able to see
20 your mom?

21 A Not initially. It took an hour or two before they
22 gave us access to see her. It was later on that evening.

23 Q All right. Before you saw her what did you
24 understand to be her injuries?

25 A They hadn't given us -- there was a person that met

1 u at the hospital that gave us a list of her injuries that,
2 as I recall, not too specifically, the extent of her
3 injuries, her head injury. She had a punctured lung, some
4 broken ribs, a broken back.

5 Q Did she have a closed head injury?

6 A Yes, sir.

7 Q Did you get to see her after you had been there for
8 a while?

9 A Yes, sir.

10 Q Can you tell me what she looked like the first time
11 that you say her?

12 A It was pretty rough. Her face was very swollen. It
13 hadn't start to bruise yet. She had a lot of abrasions on
14 her. By that time they had a breathing apparatus down her
15 throat. It was pretty rough.

16 Q Was she conscious at the time?

17 A Oh, no, sir.

18 Q At some point did they actually have to drain some
19 fluid off her brain?

20 A Yes, sir.

21 Q Had they done it by the time that you had actually
22 seen her for the first time?

23 A To my knowledge, no, sir.

24 Q I want to stop there. Before I get into some
25 questions about your mother's injuries, I want to step back

1 and I want to go back to before the wreck. How old was
2 your mom at the time of the wreck?

3 A She was 76.

4 Q Was she married?

5 A No, sir.

6 Q Had she recently been divorced?

7 A Yes.

8 Q About how long before this wreck?

9 A As I recall, it had probably been about two or three
10 years.

11 Q How long after your dad died did she get remarried?

12 A That was probably about a year, about two years
13 after dad died she remarried.

14 Q How would you describe your mom prior to the wreck?
15 Was she an independent person?

16 A Very much so. She liked to travel with some
17 friends. She had a friend in St. Louis. She had gone on
18 cruises, she had travelled to Mexico, she had a lot of good
19 friends in Oklahoma City. She had a boyfriend at that
20 time. They went dancing almost every week. She was
21 having, you know, doing what she wanted to do when she
22 wanted to do it. She was having a good time.

23 Q In terms of her personal business, keeping up with
24 her life, paying her bills, taking care of everything, did
25 you participate with that at all prior to the wreck?

1 A No, sir.

2 Q Did you have any idea about her personal business
3 prior to the wreck?

4 A No, sir.

5 Q Did she work on her own schedule, or did she check
6 with you before she did things?

7 A She did things as she pleased. Yes.

8 Q All right. Did you communicate with your mom?

9 A Yes.

10 Q Prior to the wreck?

11 A Yes.

12 Q How often would you see her?

13 A Oh, like I said, she was pretty active. Once a
14 week, once every two weeks. No really regular visits, just
15 as need or we felt the need to get together.

16 Q Since the wreck, has your participation in her life
17 increased?

18 A Yes, sir.

19 Q Has it increased a lot?

20 A Yes, sir.

21 Q Prior to the wreck, did you help your mom go buy
22 that Camry that she was in the day of the wreck?

23 A No, sir, I did not help her purchase it. As I
24 recall, she was -- she asked my advice. I did mention to
25 her she might look at the Toyotas, we had one previously.

1 But I did not. No, I didn't help her buying it or making
2 up the decision for her.

3 Q Even though she was in her 70s, she went and bought
4 a car on her own?

5 A Yes.

6 Q Although she was 76, did she have any real medical
7 problems that inhibited her ability to go and do as she
8 pleased?

9 A No, sir.

10 Q Prior to the wreck, had you ever ridden in the a car
11 with your mom?

12 A Yes.

13 Q In that Camry?

14 A Yes.

15 Q If you were with your mom, and you went somewhere in
16 the Camry, who typically drove?

17 A She typically drove. I deemed her a very good
18 driver.

19 Q In the times that you rode with her in the car, was
20 she able to talk to you and carry on conversations and
21 drive at the same time?

22 A Yes, sir.

23 Q Was she able to talk to you and carry on
24 conversations and navigate where she was going fine?

25 A Yes, sir.

1 Q Did you ever see her experience any times where she
2 seemed confused or didn't know where she was going?

3 A No, sir.

4 Q Was she in control of her mental faculties as far as
5 you could tell?

6 A Yes. Most I could tell.

7 Q In terms of your mom's car, did she keep it up?

8 A Her cars were immaculate, yes. Previous cars that
9 she had, people asked to buy them. They were always
10 polished, pristine. She kept good care of her car.

11 Q Did you tell me that she had a Buick that she kept
12 for years?

13 A Yes. She had a '76 Buick that I said a lot of
14 people tried to buy it from her for years. It was a
15 beautiful car.

16 Q Before this wreck, are you aware of your mother ever
17 having any other wrecks?

18 A No, sir.

19 Q In the times that you rode with your mom, did you
20 ever have an experience with her where she pressed the gas
21 instead of the brake?

22 A No, sir.

23 Q How old is your mom now?

24 A She is 81.

25 Q You described some things that indicated your mom

1 was pretty outgoing before the wreck; is that right?

2 A Yes.

3 Q Since the wreck is she still just as outgoing as she
4 was before?

5 A No. Since the wreck, there has been a development
6 of a lot of dizziness. And it is kind of progressively
7 gotten more so where she spends more and more time at home
8 of late.

9 Q Since the wreck does she enjoy spending time with
10 your children, the grandchildren, like she did before?

11 A There -- yes, she does. But there are times that we
12 invited her over and she declined, she says, I just don't
13 feel well. Yes, she still enjoys it.

14 Q In terms of being out in public, does she get
15 bothered by being around a lot of people?

16 A Yes. She can. Like I said, she seems to want to
17 stay.

18 Q I've seen her walk around using a cane and walker.
19 Has that been since the wreck?

20 A Yes.

21 Q Did she use any of those things before the wreck?

22 A No, sir.

23 Q And since the wreck have you helped her get to
24 doctors' appointments that she needs to go to?

25 A Yes, I have.

1 Q Have you helped her keep up with her medical care?

2 A Yes.

3 Q Has she continued to have had problems with her
4 closed-head injury since the wreck?

5 A Yes.

6 Q Have you taken her to the doctor related to those
7 things?

8 A Yes, sir.

9 Q Has that had an impact on her memory as she has
10 gotten older?

11 A Yes, sir. I believe so.

12 Q Do you think the change in her personality that you
13 told us about is associated with an injury from the wreck?

14 A Yes, sir, I believe it could be. Yes, I think it
15 does contribute.

16 Q It has been six years since this accident?

17 A Yes, sir.

18 Q In terms of your mother's treatment after the wreck,
19 can you tell us generally how long she was in the hospital,
20 including any rehabilitation that she had?

21 A As I recall, it was about three months in Tulsa,
22 probably about six or seven weeks in Oklahoma City, and
23 then maybe about three months in a nursing home in Yukon,
24 Oklahoma.

25 Q Has she been able to go back home and live on her

1 own?

2 A Yes.

3 Q Do you visit her more frequently?

4 A Yes, sir.

5 Q While she was in the hospital, did you and your
6 sister take turns caring for her?

7 A Yes, sir.

8 Q Has your sister been able to participate as much
9 since she has become ill?

10 A Not much of late. No, sir.

11 Q The assistance that you've had to jump in and help
12 your mother since the accident, do you attribute all of
13 that to the wreck?

14 A I think that -- yes, sir.

15 Q Having worked with your mom and helped with her
16 medical issues, are you aware that she has incurred some
17 medical bills?

18 A Yes, sir.

19 MR. BAKER: Your Honor, may I approach.

20 THE COURT: Yes. Your Honor, for identification
21 purposes, I'm showing the witness Exhibit 5171, 5373, 5375,
22 5378, 5380, 5382, 5389, and 5385A.

23 Q (By Mr. Baker) And are you familiar that your mom
24 has incurred these bills as a result of the injuries in
25 this wreck?

1 A I knew there was -- yes -- quite a few of them, yes,
2 sir.

3 Q Are you aware in total they're just over \$469,000?

4 A I have heard that total. Yes, sir.

5 MR. BAKER: Your Honor, we will deal with these
6 later.

7 THE COURT: Okay.

8 Q (By Mr. Baker) Mr. Bookout, kind of sum it up, is
9 your mother the same person she was since the accident?

10 A No, sir.

11 Q Is she nearly as active as she was before?

12 A Not nearly. No, sir.

13 Q All right. Based on your impression, did your mom
14 have a good life before this wreck?

15 A Yes. She was having a great time at that time.
16 Yes, sir.

17 Q Did this wreck significantly alter that?

18 A Yes, sir, it did.

19 MR. BAKER: All right. I think this gentleman
20 here may have a few questions for you.

21 THE COURT: Mr. Jennings.

22 CROSS-EXAMINATION

23 BY MR. JENNINGS:

24 Q Not very many but a few. First this, Mr. Bookout,
25 you said that your mother was 76 at the time of the crash.

1 We're now seven years down the line, so that would make her
2 83 now?

3 A Okay. Yeah. That's better. Yes, sir.

4 Q And you said you have one sister, Diana, she lives
5 here in Moore, right?

6 A Yes, sir.

7 Q Now, I remember from the conversation that we had at
8 the time of your deposition that your sister talks to your
9 mother every day, right?

10 A Yes, sir.

11 Q And you said that at that time that she knows more
12 about your mother's current condition and her condition
13 since the accident than you do, right?

14 A I don't recall saying that.

15 Q Well, I think you said that, but it's been a while.
16 In any event -- I can look it up.

17 A Sure.

18 Q But I don't think you and I are going to argue with
19 each other. If she talks to her every day she would be
20 very well informed about your mother's condition on a daily
21 basis, wouldn't she?

22 A Specifically, I never asked mom about their
23 conversations. But I'm assuming they would talk about her
24 health.

25 Q Sure. And it would just make sense, it would stand

1 to reason, that she would be informed about what is going
2 on with your mom if she is talking to her every day,
3 wouldn't it?

4 A If we assume she is talking to her about her health.
5 Yes, sir.

6 Q Sure. And then your wife is also involved in taking
7 care of your mother, right?

8 A Yes, sir.

9 Q When we talked about this at the time of the
10 deposition, you indicated that your wife and your mother
11 were the people who knew most about your mother. Do you
12 remember talking to me about that?

13 A Yes, sir.

14 Q Okay. And that was true and it is true now?

15 A Yes, sir.

16 Q Okay. Now, you said that you were aware of your
17 mother buying this 2005 Camry. And this was a couple of
18 years before the accident that is the subject of this case,
19 right?

20 A Yes, sir.

21 Q And so your mother had been the principal driver of
22 that vehicle during those two years which I think,
23 according to the evidence we've heard, amounted to about
24 9,000 miles, 9,000 plus. Do you remember that?

25 A Yes, sir.

1 Q Okay. And during that period of time, did your
2 mother ever report to you a problem with the acceleration
3 of this vehicle as she drove it?

4 A No, sir.

5 Q During that period of time, as far as you know. Did
6 the accelerator, the throttle, the brakes all work okay as
7 far as you know?

8 A As far as I know. Yes, sir.

9 Q And then you even drove the car from time to time,
10 didn't you?

11 A Occasionally. Yes, sir.

12 Q Did you ever experience a problem with the throttle
13 of the vehicle or the brakes or the accelerator or anything
14 like that?

15 A No, sir.

16 Q Okay. Now, when you gave your deposition, you and I
17 talked briefly about what your mother had told you about
18 this accident. Do you remember that conversation?

19 A Yes, sir.

20 Q You probably had a chance to read your deposition
21 before you came?

22 A Yes, sir.

23 Q And as I recall what you said, you indicated that
24 your mother doesn't have a very good recollection of that
25 time. Do you remember that conversation?

1 A Yes, sir.

2 Q All right. And you said when you've asked her in
3 these succeeding years about what happened, she said that
4 she recalled trying to stop the car but not much more?

5 A Yes, sir. That's correct.

6 Q So in your conversations with her over these years.
7 that's been pretty much what it has amounted to, right?

8 A Yes, sir. I never pressed her too much on it.

9 Q And she didn't say anymore?

10 A No, sir.

11 Q You talked a little bit, Mr. Bookout, about your
12 mother's past medical history. Were you active in taking
13 your mother to the doctor back in years before the crash
14 like 2003, long in there?

15 A No, sir.

16 Q Do you have any awareness of problems that your
17 mother had with dizziness back before this accident at all?
18 Have you looked into that?

19 A No, sir.

20 Q Do you recall the fact that your mother had problems
21 with misery loss not -- memory loss. I'm not talking about
22 Barbara Schwarz here, I'm talking about your mom. Do you
23 recall that she had problems with memory loss back before
24 this accident?

25 A I was not aware of that.

1 Q So even as you sit here at this moment you have no
2 memory of that, of knowing anything about that?

3 A No. I don't recall. She seemed normal as could be.
4 I don't recall her having any memory loss at that time.
5 No, sir.

6 Q Okay. All right. Do you recall the fact that she
7 had cataract surgery since the accident?

8 A Yes.

9 Q And that was -- do you remember when that was?
10 Couple of years after the accident?

11 A Yes, sir.

12 Q Was that the kind of thing that was coming on little
13 by little, the need for that?

14 A Cataracts?

15 Q Yes, sir.

16 A She needed it. Yes. She needed to have cataract
17 surgery. Yes, sir.

18 Q All right.

19 MR. JENNINGS: And I think that's all I have, sir.
20 Thank you.

21 THE COURT: Any redirect?

22 MR. BAKER: No, your Honor.

23 THE COURT: Mr. Bookout, you may step down, sir.

24 MR. BAKER: May he remain in the courtroom?

25 THE COURT: Will you need to recall him for any

1 reason.

2 MR. JENNINGS: I don't expect to.

3 THE COURT: Mr. Bookout. You can stay in the
4 courtroom, but do not discuss anything you hear in the
5 courtroom with anyone who is going to testify that hasn't
6 testified yet. Thank you very much. Do you have a
7 25-minute witness for me?

8 MR. BAKER: I do not.

9 THE COURT: Ladies and gentlemen of the jury, we
10 will break for the day. I wanted to let you know --
11 off-the-record for a moment.

12 (Whereupon, the jury exits the courtroom.)

13 MR. BAKER: We would offer the exhibits that we
14 read with Mr. Bookout.

15 THE COURT: And those were the medical records.

16 MR. JENNINGS: Yes, ma'am. Medical bills and the
17 only objections we have, your Honor, are the same
18 objections we stated in the pretrial. We do renew those
19 objections.

20 THE COURT: And I will overrule those and allow
21 them into evidence. I need you to tell me the numbers.

22 MR. BAKER: Yes, ma'am. 5371, 5373, 5375, 5378,
23 5380, 5382, 5389, 5385A, as in apple.

24 THE COURT: And subject to the defendants'
25 previous objections, the court will admit into evidence

1 Plaintiff's 5371, 5373, 5375, 5378, 5380, 5382, 5389, and
2 5385A.

3 (Whereupon, court stood in recess until October 17,
4 2013.)

1 STATE OF OKLAHOMA }
2 COUNTY OF OKLAHOMA }

3
4 C-E-R-T-I-F-I-C-A-T-E

5
6 I, Karen Twyford, Certified Shorthand Reporter,
7 in and for the County of Oklahoma, State of Oklahoma, do
8 hereby certify that the foregoing transcript is a true,
9 correct, and complete transcript of my stenographic notes.

10 I further certify that I am not related to any of
11 the parties herein, nor am I interested in any way in the
12 outcome of these proceedings.

13 WITNESS my Hand this _____ day of _____,
14 2013.

15
16
17
18 _____
19 KAREN TWYFORD
20 CERTIFIED SHORTHAND REPORTER
21 CERTIFICATE NO. 01780
22
23
24
25